#### UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS AMARILLO DIVISION

JIMMY F. McHENRY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CAUSE NO. 2:13-CV-228-J-BB
	§	ECF
THE STINNETT POLICE	§	
DEPARTMENT, OFFICER DRENNAN	§	
ROGERS, OFFICER PATRICK LAMBERT,	§	
OFFICER JEREMIAH JAMES MASSENGIL,	§	
and CHIEF MARIE FABRO, in their	§	
individual and official capacities, THE	§	
<b>HUTCHINSON COUNTY SHERIFF'S</b>	§	
OFFICE, SHERIFF GUY ROWH, DEPUTY	§	
CODY HINDERS, and CAPTAIN KAREN	§	
LOPEZ, 1 in their individual and official	§	
capacities, and THE HUTCHINSON	§	
COUNTY JAIL,	§	
	§	
Defendants.	§	

## <u>DEFENDANT CODY HINDERS' RESPONSE AND BRIEF</u> <u>TO PLAINTIFF'S "RIGHT TO OBJECT"</u>

TO THE HONORABLE UNITED STATES MAGISTRATE JUDGE, CLINTON E. AVERITTE:

COMES NOW Defendant Cody Hinders and files his Response and Brief to Plaintiff's "Right to Object" (Doc. 49), and in support thereof would show the Court as follows:

# I. PLAINTIFF'S OBJECTIONS TO THE MAGISTRATE'S REPORTS AND RECOMMENDATIONS SHOULD BE OVERRULED

The Plaintiff filed a pleading titled "Plaintiff's Right to Object." *See* Doc. 49. In it he argues that the state law claims against the Defendants, in their individual capacities, should not be dismissed until he has an opportunity to amend his pleadings. *See id.* at ¶ 9. However, he does not articulate what it is that he seeks to change with an amended pleading which would change the outcome of the Magistrate's Reports and Recommendations. Similar to Document 50 which he

<sup>&</sup>lt;sup>1</sup> Defendant Karen Lopez is now known as Karen Waters.

filed seeking leave to amend, the Plaintiff's Motion is procedurally defective because it fails to comply with Northern District of Texas Local Rule 15.1(a) which governs motions to amend pleadings. The Plaintiff was previously advised by this Court what was required when seeking to amend his complaint. *See* Court's Order dated Dec. 20, 2013 (Doc. No. 41).

It is unclear what other objections, if any, to the Magistrate's Reports and Recommendations are being asserted. It appears that the Plaintiff simply disagrees with the outcome of the Magistrate's rulings, which is an improper ground to invoke *de novo* review. *See, e.g., Douglass v. United Services Automobile Ass'n,* 79 F.3d 1415, 1417 (5th Cir. 1996). "Objections to a magistrate's report must be clear enough to enable the district court to discern those issues that are dispositive and contentious. Objections that fail to specify the findings believed to be in error are too general." *See* 12 FED. PRAC. & PROC. CIV. § 3070.1 (2d ed.) § 3070.1 *Practice and Procedure With Regard to Dispositive Motions —Manner and Effect of Objections to the Magistrate Judge's Recommendations* (citing *William J. Lang Land Clearing, Inc. v. Administrator, Wage and Hour Div.*, 520 F. Supp. 2d 870 (E.D. Mich. 2007), *aff'd*, 285 Fed. Appx. 277 (6th Cir. 2008)); *see also id.* ("Party's rambling and sometimes incoherent brief did not constitute 'objection' to magistrate's report. The district court would therefore adopt the magistrate's report in its entirety on the ground that the party made no objection to the report.") (citing *Mercado v. Perez,* 853 F.Supp. 42 (D.C. P.R. 1993).

Even if this Court can discern the objections asserted by the Plaintiff, they should be overruled because the Magistrate properly made Reports and Recommendations that should be affirmed based upon the correct interpretation of the law and the facts.

WHEREFORE, PREMISES CONSIDERED, Defendant Cody Hinders respectfully prays that the Court take notice of the Defendant's position concerning the Plaintiff's requested relief.

Respectfully submitted,

/s/ Matt D. Matzner

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Counsel for Defendant Cody Hinders

#### **CERTIFICATE OF SERVICE**

A true and correct copy of the above and foregoing was on this 19th day of March 2013, served as follows:

### VIA CERTIFIED MAIL, RRR

NO. 7013 2630 0002 0240 1386

Jimmy F. McHenry, # 1811322 TDCJ Bill Clements Unit 9601 Spur 591 Amarillo, Texas 79107 **Pro Se Plaintiff** 

#### **VIA ECF**

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